IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 4449/2007

SHYAMA
Vs.
CIVIL JUDGE (JD), FIRST CLASS, JAIPUR DISTRICT, JAIPUR & ORS.

DATE: 09.08.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. D.P. Sharma for the petitioner.
Mr. Manish Sharma for the respondents.

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The plaintiff-petitioner filed a suit for temporary injunction which is pending before the Civil Judge (Jr. Division) First Class, Jaipur District, Jaipur. The case of the petitioner is that he donated 0.03 hectare of land for construction of primary school in Lodha-Ki-Dhani, Chonp. During pendency of the suit for temporary injunction, the petitioner filed application for appointment of commissioner to submit the factual report as the dispute arose when the Government set apart the land for construction of the primary school.

The petitioner submits that this land is situated near pond (Talai) and is not suitable for construction of school building.

On the contrary, Head Master of the school has also reported the B.D.O, Panchayat Samiti, Amber that a gas pipeline is lying in the land surrendered by the petitioner, therefore, this land is not suitable for construction of school building.

The petitioner prayed that to verify the fact that which land is suitable, commissioner is required to be appointed and as per the report the Court can only arrive at a conclusion.

I have heard rival submissions of the respective parties and have also gone through the order impugned dated 01.06.2007 passed by the Civil Judge (JD) & Judicial Magistrate, Ist Class, Jaipur District, Jaipur, by which the application moved on behalf of the plaintiff-petitioner to appoint a commissioner has been rejected on the ground that the petitioner wants to create evidence in his favour.

Even otherwise also, the petitioner and the respondents placed a letter written by the Head Master of the school for perusal of the Court. The petitioner can also adduce evidence before the trial Court to establish the fact that which land is more appropriate to construct the primary school, but in any case, I find no illegality or error apparent on the face of the record in the order impugned dated 01.06.2007 passed by

the Court below by which the application of the petitioner for appointment of commissioner has been rejected. No interference whatsoever is required by this Court while exercising power under Article 227 of the Constitution of India.

Consequently, the writ petition fails and the same is hereby dismissed.

(K.S. RATHORE),J.

/KKC/